

TAB E

Barry A. Freid

03/08/2005

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

No. 04CV12333MEL

CASAS, BENJAMIN & WHITE, LLC.,

Plaintiff,

vs.

THE POINTE GROUP, INC., GERALD S. FREID; BARRY
FREID; KEY CORPORATE CAPITAL, INC.,

Defendants.

DEPOSITION OF BARRY A. FREID

March 8, 2005 - 10:15 a.m.

Conn, Kavanaugh, Rosenthal, Peisch & Ford

10 Post Office Square

Boston, Massachusetts

Barry A. Freid

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APPEARANCES:		Page 2	EXHIBITS		Page 4
1	CONN, KAVANAUGH, ROSENTHAL, PEISCH & FORD		2	NO.	PAGE
2	By Erin K. Higgins, Esquire		3	14	Web Site Home Page 117
3	10 Post Office Square		4	15	Amendment to Limited Guaranty 118
4	Boston, Massachusetts 02109		5	16	Fourth Modification and Extension 119
7	(617) 482-8200		6	17	E-Mails, Subject: TPG Engagement 127
8	On behalf of the Plaintiff.		7	18	Letter, Barry Freid to CBW 129
9			8	19	Letter, CBW to Barry Freid 139
10	GORDON HALEY, LLP		9	20	Letter, Barry Freid to CBW 141
11	By Stephen F. Gordon, Esquire		10	21	Letter, 6/3/04, Re: Distribution and 144
12	101 Federal Street		11	Application of Sale Proceeds	
13	Boston, Massachusetts 02110		12	22	E-Mail, Caine to B. Freid 6/4/04 146
14	(617) 261-0100		13	Re: CBW Follow Up	
15	On behalf of The Pointe Group, Inc.		14	23	Confirmation Letter Limited Modification 150
16			15	24	Draft P&S 6/25/04 152
17	NIXON PEABODY, LLP		16	25	Limited Modification to 6/3/04 167
18	By W. Scott O'Connell, Esquire		17	Letter Agreement	
19	100 Summer Street		18	26	E-Mail, Gordon to E. Casas 154
20	Boston, Massachusetts 02110		19	27	E-Mail 7/15/04, Re: TPG Request 154
21	(617) 345-1000		20	28	Confirmation Letter Limited Modification 175
22	On behalf of Key Corporate Capital, Inc.		21	29	Epoch/TPG Closing Statement 227
23			22	30	Obligations Modification 232
24	ALSO PRESENT: Gerald Freid		23	31	E-Mail, Re: Epoch/TPG 234
			24	*Original exhibits retained by Ms. Higgins.	
INDEX		Page 3	PROCEEDINGS		
1	EXAMINATION OF:	PAGE	2	MS. HIGGINS: Since this is the first	
3	BARRY FREID		3	deposition in the case, should we put something on	
4	By Ms. Higgins	5, 237	4	the record?	
5	By Mr. O'Connell	188	5	MR. GORDON: Yes.	
6			6	MS. HIGGINS: Then let the record	
7	EXHIBITS		7	reflect that at this deposition and at all other	
8	NO.	PAGE	8	depositions in this case counsel have agreed that	
9	1 Profile, The Pointe Group, Inc., 2003	25	9	all objections except as to the form of the question	
10	Re: Cranberry Pointe, Eastpointe		10	will be reserved until the time of trial as well as	
11	2 Profile, The Pointe Group, Inc., 2003	29	11	all motions to strike. I assume that Mr. Freid	
12	Re: Hammond Pointe		12	would like to read and sign?	
13	3 Business Card, Barry Freid	32	13	MR. GORDON: Yes, before any notary.	
14	4 Casas, Benjamin & White, LLC	39	14	MS. HIGGINS: We'll waive the notary	
15	5 Copies of Checks, 8 Pages	46	15	requirement and 30 days to read and sign but,	
16	6 Memorandum 12/2/04, Re: Status Update	77	16	obviously, Steve, if you need more time just let me	
17	7 Management Presentation April 2004	87	17	know. Anything else anyone want to say?	
18	8 Confidential Information Memorandum	87	18	MR. O'CONNELL: I agree with what	
19	9 Non-Binding Expression of Interest	96	19	you've indicated.	
20	10 Letter of Intent	102	20	BARRY A. FREID, after having been	
21	11 Series of E-Mails, Re: Letter of Intent	104	21	satisfactorily identified was duly sworn by the	
22	12 Confidential Presentation	104	22	Notary Public and testified as follows in	
23	13 Letter, Haley to Sucoff 5/24/04	116	23	answer to direct interrogatories by Ms. Higgins:	
24	Re: Letter of Intent		24	Q. Sir, could you state your full name	

2 (Pages 2 to 5)

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<p style="text-align: right;">Page 174</p> <p>1 Q. And this July 22nd letter has a purchase 2 price, if you look on the first page, of 32,650,000, 3 correct?</p> <p>4 A. Right.</p> <p>5 Q. Now, between the time of this letter and 6 the time of the closing were there any other issues 7 that arose that affected the purchase price other 8 than this abutter issue and the service of the grand 9 jury subpoena that you recall?</p> <p>10 A. Yeah, I recall -- I recall there was a 11 lien against -- I think there were a couple of liens 12 that had to be paid.</p> <p>13 Q. Were those issues that came up between the 14 time that this July 22nd letter was signed and the 15 closing?</p> <p>16 A. I think so.</p> <p>17 Q. What were the liens?</p> <p>18 A. There was a mechanic's lien from 19 construction costs; there was -- I think that there 20 was -- there might have been liens from some of the 21 utility companies; there were -- we were having 22 problems with an Otis elevator, for example. We had 23 a legal case going. There were some Workmen's 24 Compensation cases that were current; there was some</p>	<p style="text-align: right;">Page 176</p> <p>1 statement?</p> <p>2 A. Yeah.</p> <p>3 Q. And you said you went to the closing at 4 Goodwin Proctor, correct?</p> <p>5 A. Yes, I did.</p> <p>6 Q. And while you were there that day I 7 presume you saw a closing statement?</p> <p>8 A. Yes, I did.</p> <p>9 Q. And was that the first time you had seen a 10 closing statement for this transaction?</p> <p>11 A. Yes.</p> <p>12 Q. So you hadn't seen any drafts in the days 13 leading up to the closing?</p> <p>14 A. Not really. I mean, I -- I probably did. 15 I mean, there was -- there was many of them. You 16 know, I started to just not look so close at stuff.</p> <p>17 Q. To the extent that the purchase price that 18 Epoch had agreed to went down from what we saw in 19 that July 22nd letter, the 32,000,000 plus number, 20 to the extent that number went down, were you 21 involved in discussions as to whether any new 22 purchase price was acceptable to The Pointe Group?</p> <p>23 A. To the best of my recollection we were 24 just trying to come up with as little money as</p>
<p style="text-align: right;">Page 175</p> <p>1 claims that were current. You know, all this stuff 2 started to come up all of a sudden when you're going 3 to go to a closing and your attorney says, well, 4 what's this, what's that; so we faced them as 5 necessary.</p> <p>6 (Document marked as Exhibit No. 28 7 for identification.)</p> <p>8 BY MS. HIGGINS:</p> <p>9 Q. Mr. Freid, my only question about this 10 document is whether that you recall there was a 11 final set of modifications to this, to the original 12 June 3rd, 2004 letter agreement which is referenced 13 in the first paragraph of this September 27th 14 letter?</p> <p>15 A. Right.</p> <p>16 Q. Do you remember that you received this 17 September 27th letter from Steve Dunham constituting 18 this Fourth Modification to the June 3rd letter?</p> <p>19 A. Probably.</p> <p>20 Q. As the closing was approaching did you 21 review any drafts of closing statements, attachments 22 to closing statements?</p> <p>23 A. No.</p> <p>24 Q. Do you know what I mean by a closing</p>	<p style="text-align: right;">Page 177</p> <p>1 possible to get this -- to get the closing done.</p> <p>2 Q. Meaning The Pointe Group?</p> <p>3 A. No, meaning my family: Meaning my mother, 4 my brother, and my two sisters and myself. To the 5 best of my recollection we were just trying to come 6 up with as little money at the closing as possible.</p> <p>7 Q. And the day you went to the closing did 8 your family bring money to the closing?</p> <p>9 A. I believe so.</p> <p>10 Q. Do you remember how much?</p> <p>11 A. I think it was a little bit over 200,000.</p> <p>12 Q. And at any point prior to the day of the 13 actual closing were you ever told that your family 14 would have to bring more than that to the closing?</p> <p>15 A. Not that I remember.</p> <p>16 Q. When you went to the closing at Goodwin 17 Proctor it was on September 30th, correct?</p> <p>18 A. I'm pretty sure.</p> <p>19 Q. Were you expecting that CBW would be paid 20 out of the proceeds of the closing?</p> <p>21 A. When I went to the close -- when I went to 22 the closing I didn't know what to expect.</p> <p>23 Q. Do you remember in the days leading up to 24 the closing having discussions with your brother</p>

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1 about whether CBW's fee would need to be paid out of 1
 2 the sale proceeds?

3 A. No.

4 Q. Did you ever see an invoice submitted by
 5 CBW in advance of the closing?

6 A. No, I didn't.

7 Q. When you went to the closing and you --
 8 did you actually see -- you said you saw a closing
 9 statement?

10 A. Yes, I did.

11 Q. Did you make any observation as to what
 12 that closing statement said about CBW's fee?

13 A. I just saw that it was outside of the
 14 deal.

15 Q. How did you know it was outside of the
 16 deal?

17 A. It stated it clearly on the statement.

18 Q. And were you surprised to see that?

19 A. Pleasantly.

20 Q. Did you have any knowledge when you went
 21 to the closing that morning that such an agreement
 22 had been reached?

23 A. No.

24 Q. Do you remember there being any discussion

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A. I told you there was three initials there.

2 I'm not sure what they were, but to be paid outside
 3 of the closing.

4 Q. Do you remember who discussed or who said,
 5 well, that's what that means, they're going to be
 6 paid outside of the closing?

7 A. John McCullough.

8 Q. And the initials "POC," does that mean
 9 anything to you?

10 A. Yeah, something like -- yes, that's...

11 Q. And you remember John McCullough saying
 12 that they were going to be taken care of outside of
 13 the closing?

14 A. He never said "taken care of"; he didn't
 15 use that word.

16 Q. What did he say?

17 A. He said to be handled outside of the
 18 closing; that's it. He didn't...

19 Q. And you don't remember having any
 20 discussions with any of your family members, with
 21 anyone other than counsel, in the days leading up to
 22 the closing concerning how CBW was going to be paid?

23 A. Well, the only conversations that I -- you
 24 know, prior to it, no. Prior to it, no, I didn't

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1 at the closing, other than obviously discussions
 2 that were private between you and counsel, but do
 3 you remember any discussion at the closing as to how
 4 CBW was going to be paid?

5 A. No.

6 Q. And just so my question's clear, that
 7 includes conversations that you weren't a party to
 8 but conversations that you overheard as well; did
 9 you ever hear anyone discussing that issue?

10 A. All I know is that it was outside of the
 11 closing statement. It was to be paid outside.

12 Q. Do you remember, you know, sometimes this
 13 happens during a closing, you go down the closing
 14 statement and sort of talk about each item on the
 15 closing statement; did that happen at this closing?

16 A. Just like it was said, there was three
 17 initials outside of closing.

18 Q. Okay, but my question was whether during
 19 the closing did the people who were at the closing
 20 go through each item and kind of check off each one
 21 as to, okay, this amount is going to be paid, this
 22 amount's going to be paid?

23 A. I believe so. I believe so.

24 Q. When you got to CBW --

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1 have any conversations.

2 Q. Do you remember we saw those -- there was
 3 the letter that you sent to CBW?

4 A. Right.

5 Q. Asking if they could compromise their fee,
 6 right?

7 A. Right.

8 Q. We saw a later e-mail to CBW again
 9 requesting that they compromise the fee?

10 A. Right.

11 Q. And you remember we talked about the fact
 12 that they agreed to cut \$50,000 off, correct?

13 A. Right.

14 Q. And so between the time of that
 15 correspondence and the closing itself you had no
 16 communications with anyone, leaving aside counsel,
 17 about how CBW was going to be paid out of this
 18 transaction when there was no money?

19 A. You're right, there was -- there was no
 20 money. I --

21 MR. GORDON: The question is
 22 conversations.

23 A. No, no.

24 Q. You had no conversations with anyone about